

J. Melody



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sterling Services Incorporated

File: B-232756.3

Date: October 28, 1988

DIGEST

Agency is not required to withhold award pending appeal of Small Business Administration (SBA) affirmative size determination; appeal ruling reversing size determination applies only if agency receives it before award or if agency in its discretion decides to terminate contract if it receives notice of the ruling after award.

DECISION

Sterling Services Incorporated requests reconsideration of our decision, Sterling Services Inc., B-232756.2, Oct. 7, 1988, 88-2 ¶ CPD_____, in which we dismissed Sterling's protest under Department of the Army invitation for bids (IFB) No. DABT39-88-B-0079, a total small business set-aside. We deny the request.

Sterling had argued that the Army improperly made award to LBM, Inc. during the pendency of its appeal of a Small Business Administration (SBA) determination that LBM is a small business. We dismissed the protest on the ground that there is no legal requirement that a contracting agency delay awarding a contract during such an appeal.

Sterling now requests reconsideration on the basis that the determination issued by the SBA specifically stated that "in order to apply to a pending procurement," any appeal of the determination must be postmarked or delivered to the SBA Office of Hearings and Appeals within 5 days of receipt. Since its appeal met this time limit, Sterling argues that the Army was required to delay the award pending the appeal.

Our standard for reconsidering a prior decision is that the requesting party must show that the decision was based on errors of fact or law, or present information not previously

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considered that warrants reversal or modification of the decision. Bid Protest Regulations, 4 C.F.R. § 21.12 (a) (1988).

Sterling's argument does not meet this standard. It remains, as we held in our prior decision, that there is no legal requirement that the contracting agency withhold award pending an appeal of an SBA determination that the proposed awardee is a small business. The fact that the SBA indicated that a timely appeal would apply to this procurement does not mean that the Army was required to withhold award. Rather, it means that the SBA appeal ruling would apply if the agency received it before making an award. In addition, if the ruling is received after award and the ruling is that the awardee is not a small business, the agency, in the exercise of its sound discretion, may terminate the contract. See Crysen Corp. et al., B-217283 et al., Mar. 14, 1985, 85-1 CPD ¶ 311 at 5.

The request for reconsideration is denied.

Ronald Berger

fn James F. Hinchman
General Counsel